JOHN H. HUBER
FRANCES L. HUBER

IBLA 75-312, 75-313 Decided October 15, 1975

Appeals by John Huber and by Frances L. Huber from decisions of the Fairbanks District Office, Bureau of Land Management (BLM), rejecting their applications to purchase headquarters sites (designated F 515 and F 516 respectively).

Affirmed.

1. Alaska: Headquarters Sites

> An applicant for a headquarters site patent is required to prove that he, or his employer, is engaged in a trade, manufacture, or other "productive industry," for which applicant uses the site as a headquarters personally (or by an employee, if the applicant is in business); the conduct of an enterprise from the site by a third party renting the site and the improvements of the applicant does not qualify.

APPEARANCES: John H. Huber and Frances L. Huber, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

The factual context of these two cases is substantially the same. Both applications to purchase headquarters sites were rejected in separate decisions dated December 11, 1974, on the ground that the applicants failed to show that they were themselves engaged in a productive industry for which the sites were required as headquarters and that renting the sites to a third party for the conduct of a trapping and big game guide business did not qualify.

Appellants based their claims on the contention that the premises were used as headquarters for a trapping and big game guide business by a Mr. C. A. Boyd who entered into a contract

with the appellants for use of the headquarters sites. The terms of each contract called for Boyd to pay an annual rental of $500 with him having the option to substitute services in the form of work around the premises computed at the rate of $5 per hour for cash in paying the rent. In each contract the Hubers reserved, "only the recreational use * * * on a non interference basis."

In their Notices of Appeal appellants allege that the findings of fact by the BLM were incorrect and that the facts, properly construed, fulfill the legal prerequisites of a headquarters site application. Appellants' supplemental statement of reasons contained no evidence of appellants' personal use of the premises as a headquarters site except for an allegation that appellants have personally done some trapping from the tracts on occasion prior to the filing of the notices of headquarters site claims. Even this showing omitted any specific facts from which it could be inferred appellants were in the trapping business.

The statute governing applications for headquarters sites provides in part as follows:

> * * * [A]ny citizen of the United States twenty-one years of age who is himself engaged in trade, manufacture, or other productive industry may purchase one claim, not exceeding five acres, of unreserved public lands * * * in Alaska as a homestead or headquarters, under rules and regulations to be prescribed by the Secretary of the Interior * * *. (Emphasis added.)

43 U.S.C. § 687a (1970).

With respect to headquarters site applications, the regulations provide, in part, that an application must disclose "[t]he nature of the trade, business, or productive industry in which applicant or his employer * * * is engaged." 43 CFR 2563.1-1(a)(4). Thus the statute and the regulations promulgated thereunder require proof that the applicant himself is engaged in a productive industry, except where the applicant is an employee of such an industry.

[1] The case of Kathleen M. Smyth, 8 IBLA 425 (1972), is dispositive of this matter. The applicant in that case alleged trapping, fishing, and hunting were engaged in by several people other than the applicant herself from the headquarters site which was being sought. Applicant was employed full-time as a school teacher and was physically disabled. This Board affirmed the rejection of

the application on the ground that there was no allegation by the applicant that she herself engaged in productive industry from the premises (indeed there were indications that she was unable to do so) and that there was no allegation that any of the people who engaged in the activities were employed by the applicant. We held in that case that in order to comply with 43 CFR 2563.1-1(a), the applicant "* * * must show that she was using the land claimed as a headquarters site for a 'productive industry' * * *" (Emphasis added). Kathleen M. Smyth, supra at 426.

Upon a complete review of the record in these case files, it is apparent from the facts of this case that the only business activity of the appellants with respect to the site since 1967 was that of renting the land and improvements and some equipment to Mr. Boyd. An application to purchase land pursuant to 43 U.S.C. § 687a for a trade and manufacturing site must be based upon the use of the land by the applicant as the site of some commercial enterprise and not upon the use of the land, alone, as the stock in trade for sale or other disposition. Seldon H. Klinke, 7 IBLA 83, 84 (1972). Similarly, for a headquarters site the tract must be used as a headquarters for the business of the applicant, either personally or by a qualified employee, unless the applicant is an employee of a qualifying business in which case it would have to be used by the applicant in connection with his employment.

The evidence discloses that any productive enterprise that was carried on from the premises was the work of Mr. Boyd, who was an independent contractor. None of the evidence on file tends to show that Mr. Boyd was an employee or agent of appellants, or that appellants had any control or direction of his enterprise. For example, he was not paid wages nor does there appear to be any of the other indicia of an employer -- employee relationship.

Even if the trapping enterprise of Mr. Boyd were to be considered the business of the applicants, there has been a failure to make any showing that appellants have business licenses or have paid business taxes and other clear evidence that they have been in business. Although a modest operation would not necessarily fail to qualify under the law, an operation which is infrequent in nature and productive of only negligible gross receipts will not generally qualify as a "productive industry." Lee S. Gardner, A-30586 (September 26, 1966).

As an applicant for a patent to land, a person seeking to buy a headquarters site has the burden of proving that he has complied with the law. Lee S. Gardner, supra. The appellants, although they

have been granted repeated extensions of time in which to introduce both evidence and legal arguments, have failed to meet their burden of proof.

To the extent that the offers by the appellants in their supplemental statement of reasons to supply further evidence could be construed as requests for further time in which to file further reasons and proof, or as a request for a hearing, such requests are denied. Appellants have each been granted two extensions of time on appeal covering a total of six months in which to file reasons, and were granted previous extensions by the Bureau. They were told that the last extension granted on appeal would be the final extension. It appears unlikely on a review of the record that appellants could present anything further which could change the result in this case. They have made no tender of specific evidence which would show they are in any business in connection with the sites other than as discussed above. Therefore, no hearing is warranted.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Martin Ritvo
Administrative Judge